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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/541,655

03/10/2006

Nina Ackermans

12510

3432

7590

02/18/2009

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EXAMINER

NERANGIS, VICKEY MARIE

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

02/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/541,655	Applicant(s) ACKERMANS, NINA	
	Examiner Vickey Ronesi	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 15-18 is/are rejected.
- 7) ☒ Claim(s) 4-14 and 19-21 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/26/06</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Specification

1. As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading.

- BACKGROUND OF THE INVENTION
 - Field of the Invention
 - Description of Related Art
- BRIEF SUMMARY OF THE INVENTION
- BRIEF DESCRIPTION OF THE DRAWINGS
- DETAILED DESCRIPTION OF THE INVENTION

Each of the above items should appear in upper case, without underlining or bold type, as a section heading.

Claim Objections

2. Claims 4-14 and 19-21 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot be dependent on a multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 4-14 and 19-21 have not been further treated on the merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

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international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by EP '310 (EP 0 658 310).

EP '310 exemplifies a tubular film comprising a propylene-based copolymer (B1) and titanium dioxide having an average grain size of 60 nm (MB3) (Examples 3, 6, and 8) which is prepared by melt mixing (Example 1).

In light of the above, it is clear that EP '310 anticipates the presently cited claims.

Claim Rejections - 35 USC § 102/103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP '310 (EP 0 658 310).

The discussion with respect to EP '310 in paragraph 3 above is incorporated here by reference.

Given that EP '310 anticipates the presently claimed composition and that EP '310 teaches the desirability of low oxygen transfer rate in the examples, it is inherent that it exhibit the presently claimed oxygen transfer rate since such a property is evidently dependent upon the nature of the composition used. Case law holds that a material and its properties are inseparable. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

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In light of the above, it is clear that EP '310 anticipates the presently cited claims.

Alternatively, the presently claimed oxygen transport property would obviously have been present once the EP '310 product is provided.

Claim Rejections - 35 USC § 103

5. Claims 1-3, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loontjens et al (US 2002/0161096).

Loontjens et al discloses an extruded polyolefin molding that can be made into mono- or biaxially stretched (oriented) films (paragraph 0041) comprising a polyolefin and nanoclay (i.e., nanofiller) paragraph 0011). The polyolefin molding is prepared by melt extrusion mixing (paragraph 0061).

Loontjens et al fails (i) to exemplify a stretched film and (ii) to disclose oxygen transport properties like presently claimed.

With respect to (i), given that Loontjens et al that the polyolefin molding can be oriented into an oriented film, it would have been obvious to one of ordinary skill in the art to orient the molding into a film.

With respect to (ii), Loontjens et al teaches the desirability of an article that is less permeable to gases (paragraph 0013).

Given this, it would have been obvious to one of ordinary skill in the art to prepare a molding that is oriented and that has oxygen transport properties like presently claimed.

6. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loontjens et al (US 2002/0161096) in view of Mueller (US 4,352,849).

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The discussion with respect to Loontjens et al in paragraph 5 above is incorporated here by reference.

Loontjens et al teaches that the extruded molding is mono- or biaxially stretched into an oriented film, however, it fails to disclose (i) the drawing ratio or (ii) the temperature at which the molding is stretched.

With respect to (i), Mueller discloses an oriented film comprising polyolefin layers and teaches that the draw ratio in the longitudinal (i.e., machine) direction is 4-7 (col. 3, lines 8-10).

Given that Loontjens et al and Mueller are both drawn to oriented polyolefin films and further given that Mueller teaches that such films have a draw ratio of 4-7, it would have been obvious to one of ordinary skill in the art to stretch the molded article of Loontjens et al into a film using a draw ratio of 4-7 in the machine direction.

With respect to (ii), Mueller teaches that the temperature at which the extruded molding is stretched is defined by the melting temperature of the matrix resin (col. 1, lines 40-55).

Given the teachings by Mueller with respect to choosing suitable stretching temperature, it would have been obvious to one of ordinary skill in the art to select an appropriate stretching temperature, including that presently claimed, in order to orient the extruded molding of Loontjens et al into an oriented film.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vickey Ronesi whose telephone number is (571) 272-2701. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 5:00 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

2/18/2009

vr

/Vickey Ronesi/
Examiner, Art Unit 1796